

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.606/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2021-22)

The Income Tax Officer, Ward 17(1), Hyderabad.	Vs.	Mahalakshmi Laboratories Pvt Limited, Hyderabad. PAN : AADCV8120G
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.615/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Mahalakshmi Laboratories Pvt Limited, Hyderabad. PAN : AADCV8210G	Vs.	The Income Tax Officer, Ward 17(1), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No.9/Hyd/2024

(Arising out of ITA No.606/Hyd/2024
निर्धारण वर्ष / Assessment Year: 2021-22)

Mahalakshmi Laboratories Pvt Limited, Hyderabad. PAN : AADCV8210G	Vs.	The Income Tax Officer, Ward 17(1), Hyderabad.
Cross Objector		Respondent

निर्धारिती द्वारा/Assessee by: Shri Y.V. Bhanu Narayan Rao, C.A.
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidia, CIT-DR.

सुनवाई की तारीख/Date of hearing: 15/10/2024
घोषणा की तारीख/Pronouncement on: 18/10/2024

ORDER**PER BENCH :**

The appeals filed by the Revenue and the cross appeal filed by the assessee are directed against the order of Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dt. 22.04.2024 (hereinafter referred to as “the Id.CIT(A)”) invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”) relating to A.Y. 2021-22.

2. The cross objection filed by the assessee is barred by limitation by 16 days. The appellant has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the Cross Objection for hearing.

2.1. For the sake of convenience, both the appeals of assessee and Revenue and the Cross Objection filed by the assessee were heard together and are being disposed of by this common order.

2.2 The Revenue has raised the following grounds :

"1. Whether on the facts and circumstances of the case, the Id. CIT(A) is correct in deleting the addition by ignoring the fact that the assessee company could not prove that the goods were actually supplied by the two parties i.e., Sri Jawahar Lal Shah & Daya Nand Maruti Phalke.

2 Whether on the facts and circumstances of the case, Id. CIT(A) is correct in deleting the addition by ignoring the fact that the assessee company could not prove that the purchases so made from the above two parties were shown in the sales.

3. Facts of the case, in brief, are that assessee is a company, filed its return of income for AY 2021-22, declaring an income of Rs.1,60,49,706/-. The case was selected for scrutiny through CASS and notices under Sections 143(2) and 142(1) of the Act were issued on 28.06.2022 and served to the assessee. To verify the purchases, notices under Section 133(6) were sent to

various suppliers. Further, notice u/s 142(1) of the Act along with questionnaire was issued on 26.07.2022. After availing various opportunities, finally assessee had responded to the notices with the required details. Assessing Officer after verification of the reply submitted by the assessee found that the assessee had taken bills in its own name and had issued bills to other concerns for the same quantity and the Assessing Officer also found many discrepancies with respect to purchases worth Rs.6,73,00,600/- from Jawahar Lal Shah, Proprietor of Parameshwar Traders and worth Rs.1,48,27,260/- from Mr. Dayanand Maruti Phalke, Proprietor of Rama Krishna Enterprises etc. After verification of the entire facts, Assessing Officer completed the assessment u/s 143(3) r.w.s. 144B of the Act by making disallowance of purchases of Rs.8,21,27,860/- on account of bogus purchase and assessed the total income of the assessee at Rs.9,81,77,566/-.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) / NFAC, who granted part relief to the assessee by observing as under :

“4.2.6. In view of the facts and circumstances and the judicial pronouncements cited above, disallowance in the instant case of the alleged bogus purchases can be resorted to the extent of excess profit element embedded in such purchases shown to have been made from these two parties. Apart from that the yardstick laid down by Hon’ble Courts in the aforesaid judgments by disallowing G.P. related to the purchases, as approximate benefit garnered in such unverifiable purchases where sales are not disapproved, is a sound benchmark which needs to be adopted in the present case too.”

4.2.7 Therefore in the instant case too, all the facts and circumstances outlined above leads to the conclusion that although the appellant claimed purchases made from these two parties during the year under consideration but at the same time it is difficult to accept that the purchases shown on the invoices/bills issued by these two parties are as per the prevailing market price of those materials or actually been made from the party and might have been purchased in the grey market. The appellant has not placed any evidence on record that the goods were purchased from these two parties at arms' length price. The appellant has also not placed on record any comparable bills/invoices for purchases of similar items made from other party to establish that the purchases from these two parties in question were at par with the purchases made from other parties during the period under consideration. The possibility of such purchases from unregistered dealers without invoices cannot be ruled out. In view of the above, the correctness of the purchase prices mentioned on such bills/invoices issued by these two parties cannot be accepted and some additional profit needs to be estimated on such purchases made from the abovementioned party.

4.2.8 Keeping in view the totality of the case, the AO's action of addition on account of bogus purchases cannot be sustained because the AO has not substantiated his claim that how the sales of same quantities were made without having purchases of these items. Further, I am of the considered opinion that keeping in view the medicinal items, an additional profit margin@15.00% of purchases from these two parties should be taxed to plug the leakage of revenue on account of purchase from undisclosed party but booked in the name of these two parties. Hence, an addition to the extent of Rs. 1,23,19,179/- (15% of Rs. 8,21,27,860) is confirmed and Rs.6,98,08,681/-(Rs. 8,21,27,860 - Rs. 1,23,19,179) is deleted. Thus, this ground of appeal is partly allowed.

4.3 Ground No. 5 relates to levy of interest u/s 234A, 234B & 234C. The appellant submitted that this has been levied against the provision of law and against the settled legal position of charging the interest u/s 234A, B and C in the assessment. The matter has been examined and find that the charging of interest u/s 234A, 234B & 234C is consequential and mandatory in nature, which has also been held by the Hon'ble Supreme Court in case of M.H. Ghaswala (2001) 252 ITR1(SC). Since the ground no. 3 & 4 have been partly allowed in the instant case, the Assessing Officer is directed to allow consequential relief. Hence, ground no. 5 is partly allowed.

4.4 Ground No. 6 relates to initiation of penalty u/s 270A r.w.s. 274 of the Act. This ground is regarding initiation of penalty proceedings u/s 270A which is premature at this stage because no appeal lies against initiation of penalty. Accordingly, this ground is dismissed.

4.5 Ground No. 7 relates to non-grant of TCS credit and regular tax payment. The appellant has contended that then AO didn't grant credit of TCS of Rs. 53,867/- and also credit of regular tax payment of Rs. 49,30,410/-. During the appellate proceedings, the appellant neither make any submission on this ground nor furnished any evidence in support of ground that this issue arises from the assessment order against which the present appeal has been filed. Further, the 26AS statement for the present financial year doesn't reflect any credit of TCS as well as regular tax payment. In view of these facts, this ground of appeal is dismissed.

4.6. Additional Ground relates to levy of tax u/s 115BBE of Rs., 17,18,108/-. During the appellate proceedings, the appellant has raised an additional ground relating to levy of tax u/s 115 BBE by AO/Asst. Unit / CPC. However, no evidence is furnished in support of this ground to show that the taxes u/s 115BBE was levied on the result of assessment order u/s 143(3) of the Act against which the present appeal has been filed. After examination of the assessment order, it is seen that the AO didn't record his any finding about levy of tax u/s 115BBE of the Act. Hence, this ground doesn't arise from the assessment order. Thus, this ground of appeal is dismissed.

5. In result, the appeal of the appellant is partly allowed.”

5. Feeling aggrieved with the order of ld.CIT(A), Revenue as well as the assessee are now in appeal before us.

6. Before us, ld.DR submitted that the ld.CIT(A) granted part relief to the assessee ignoring the fact that assessee company could not prove that goods were actually supplied by the two parties i.e., Shri Jawahar Lal Shah and Shri Daya Nand Maruti Phalke. Furthermore, ld.DR relied upon the decision in the case of Shri Ganesh Rice Mills Vs. CIT of Allahabad High Court reported in (2007) 294 ITR 316, wherein the assessee failed to establish the purchases in question which have been made from the non-

existent firms. In the said case, Tribunal has upheld the finding of Assessing Officer that in order to lower profits, bogus purchases had been introduced and held that addition on account of disallowance of such purchases was justified. Ld.DR further submitted that Assessing Officer after finding so many discrepancies with respect to purchases worth Rs.6,73,00,600/- from Jawahar Lal Shah, Proprietor of Parameshwar Traders and worth Rs.1,48,27,260/- from Mr. Dayanand Maruti Phalke, Proprietor of Rama Krishna Enterprises and discussing at length and analyzing the entire facts of the case, has rightly made disallowance of purchases of Rs.8,21,27,860/-.

7. On the other hand, Id.AR submitted that the assessee has made purchases after due verification of the bonafides of the GST Registration of the impugned suppliers namely, Jawahar Lal Shah, Proprietor of Parameshwar Traders and Mr. Dayanand Maruti Phalke, Proprietor of Rama Krishna Enterprises. After receipt of the material from the impugned suppliers and also the documents such as Invoices, E-way Bills generated from GST Portal, computerized way Bills, etc., the payment was released through Banking channels after being completely satisfied about the bonafides of the purchases made. He submitted that the assessee could not make further inquiries about the impugned suppliers and their bonafides due to COVID 19 conditions prevalent at the time of receipt of supplies. He submitted that the assessee has furnished the entire documentation and also the

payment details during the assessment proceedings for verification by the Assessing Officer to establish that the purchases are bonafide. He submitted that once the bonafides of the supplies and bonafides of purchase of goods are met, the assessee is not expected under the law to speak about the business activities of the suppliers of the material. The assessee has established its own credentials and further established that the purchases are bonafide and furnished the required documentation to prove the purchases and receipt of goods are genuine.

8. Referring to the decision in the case of Bhagatram Hyderabad Vs. Asst. Commissioner of Income Tax, 2020 SCC decided on 28-07-2020, the ld.AR submitted that in the said case, the coordinate Bench of the Tribunal held that the order of the ld.CIT(A) to enhance the addition by treating the entire bogus purchases as the income of the Assessee is not justified. The ld.AR further submitted that in the case of ACIT vs. Sanjay Kumar Kochar, ITAT, Raipur, ITA No.99/RPR/2018 dt. 26.07.2022 relating to deletion of addition on account of Bogus Purchases & Bogus Sales, in which entire Addition was deleted. He also referred the case laws, mentioned in the order of ld.CIT(A) and prayed to delete the additions made by the Assessing Officer. The ld.AR also submitted that its purchases are bonafide and material from such impugned purchases was received and the same after some process was also sold and such sales were declared in its

accounts and I.T.R filed declaring sales including sales relating to bogus purchases have been accepted by the Revenue since the sales are not doubted. The Id.AR also submitted that during all these years, the GST made by the above suppliers was accepted by the GST authorities. Therefore, it is incorrect to brand the genuine purchases as sham transactions and treating them as bogus purchases especially when the assessee has proved beyond doubt regarding the receipt of such material and sale of such material and the payments were made through banking channels.

9. The Id.AR further submitted that if purchases are to be treated as bogus then the corresponding sales also are to be treated as bogus and only the margin i.e. difference in purchase and sales has to be brought to tax as additions and not the entire purchases. He also submitted that the fact of acceptance of sales automatically implies that there are purchases and even the purchases which were treated as 'bogus' by the Assessing Officer are also possessing all the characters of genuine purchases. He accordingly, submitted that the addition made by the Assessing Officer is not justified. He submitted that the profit margin of 15% on bogus purchases have been taken by the Id.CIT(A) which is very high, therefore, he requested for the average profit margin of 5%, reasonable for their line of business.

10. We have heard the rival submissions and perused the material on record, including the paper book and case laws relied upon by the parties. In the present case, we find that Assessing Officer found many discrepancies with respect to purchases worth Rs.6,73,00,600/- from Jawahar Lal Shah, Proprietor of Parameshwar Traders and worth Rs.1,48,27,260/- from Mr. Dayanand Maruti Phalke, Proprietor of Rama Krishna Enterprises etc and after verification of the entire facts, he made disallowance of purchases of Rs.8,21,27,860/- on account of bogus purchases. On appeal, the Id.CIT(A) held that an additional profit margin @ 15% of purchases from the alleged two parties and thereby made an addition to the extent of Rs. 1,23,19,179/- (15% of Rs. 8,21,27,860) and deleted Rs.6,98,08,681/-. We further found that in the instant case, assessee has filed the details of stock, copies of purchases invoices, E-waybills, computerized receipts from weigh bridges etc. The payments were also made through banking channels and the sales have not been doubted by the Assessing Officer. Hence, we do not find any infirmity in the order of Id.CIT(A) on this issue.

11. On perusal of the record, we find that the case of the assessee is covered with the decision of coordinate Bench of the Tribunal in the case of Sangam Wires, Hyderabad in ITA No.356/Hyd/2023 dt.08.04.2024 wherein the Tribunal on identical facts upheld the grounds raised by the Revenue by holding as under :

“17. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.16,86,10,466/- being purchases made from 4 parties, the details of which are given in Para No.3 on the ground that notices u/s 133(6) of the Act were issued to Passhupati Steels India and Rudra Impex but there was no compliance made by these parties. Further physical verification of offices of the above parties were also done and it was found that no such entities are operating from the addresses mentioned. Similarly, in the case of the above parties, the GST Registration was cancelled w.e.f. 24.03.2021 in case of Rudra Impex, the GSTIN of Rico Impex was cancelled w.e.f. 7.6.2019, in case of Passhupati Steel India was cancelled w.e.f. 16.04.2019 and GSTIN of Triveni Steel India was cancelled w.e.f. 28.10.2021. Further, the Assessing Officer noted that three of the purchase parties namely Rudhra Impex, Triveni Steels India & Rico Impex used the same transporter i.e. Shree Siddhi Vinayak Logistics to transport goods and all the four parties used same weighing scale situated at Thane in the name and style of Krishna Computerized Weight Bridge.

17.1 We find the learned CIT (A) NFAC deleted the addition made by the Assessing Officer but directed the Assessing Officer to apply the rate of profit on other genuine purchases, the reasonings of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) NFAC on this issue. We find the assessee in the instant case has filed the details of stock, copies of purchases invoices, E-waybills, computerized receipts from weigh bridges etc. The payments were also made through banking channels and the sales have not been doubted by the Assessing Officer.

17.2 We find an identical issue had come up before the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (356 ITR 0451). In that case the Hon'ble High Court has observed as under: (Held Portion)

The assessee was engaged in the business of trading in steel on wholesale basis. During the course of the reassessment proceedings for the year 2006-07, the Assessing Officer noticed that some of the suppliers of steel to the assessee had made their statements on oath to the effect that they had not supplied the steel to the assessee but had only provided sale bills. In turn, they

were receiving a small commission. The Assessing Officer concluded that the total purchase of Rs.41,04,903/- cumulatively made from the three parties were bogus. He thus treated such purchases as bogus purchases and added the entire amount of Rs.41,04,903/- to the gross profit of the assessee. He also rejected the books of account and estimated the assessee's business profits at Rs. 5 lakhs. The Commissioner (Appeals) held that the assessee had made purchases from other parties in the open market. Therefore, he retained 30 per cent. of the purchases cost as the probable profit of the assessee. He reduced the additions from Rs. 41,04,903/- to Rs.12,31,471/- and deleted the balance of Rs. 28,73,432. While doing so, he deleted the addition of Rs. 5 lakhs as made by the Assessing Officer on the ground that the addition on account of bogus purchases had already been made. The Tribunal was of the opinion that twelve and half per cent of the disputed purchases should be retained in the hands of the assessee as business profits. On appeal to the High Court : Held, dismissing the appeal, the Commissioner (Appeals) believed that the purchases were not bogus but were made from the parties other than those mentioned in the books of account. That being the position, not the entire purchase price but only the profit element embedded in such purchases could be added to the income of the assessee. In essence, the Tribunal estimated the possible profit out of purchases made through non-genuine only parties. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick could be adopted”.

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Xxx

22.2 Therefore, under the circumstances, the Hon'ble High Court had reversed the decision of the Tribunal and directed the Assessing Officer to add the entire bogus purchases. However, in the instant case, no such blank signed cheques and vouchers of the 4 alleged concerns were found nor there was any endorsement on the back of the cheque. Similarly, no blank bill books, letter heads and vouchers of these concerns were found and seized from the premises of the assessee. Therefore, the said decision is not applicable to the facts of the present case. In any case after the decision of the N.K. Industries Ltd (Supra), decision of various other High Courts have come in which case it has been held that only the profit element embedded in such bogus purchases can be added and not the entire purchases can be added especially when the sales have not been disputed. It has been held in various decisions that when two views are possible, the view which is favourable to the assessee should be adopted. Since the Hon'ble Bombay High Court and Hon'ble Gujarat High Court in various decisions, which have been reproduced in the preceding

paragraphs held that only the profit element embedded in such bogus purchases has to be added, therefore, the decision relied on by the Revenue, in our opinion, is not applicable to the facts of the present case.

23. In view of the above discussion and in view of the detailed reasonings given by the learned CIT (A) NFAC, we do not find any infirmity in his order. Accordingly, the same is upheld and the grounds raised by the Revenue as well as the first ground raised by the assessee are dismissed.

24. So far as Ground No.2 raised by the assessee challenging the levy of interest u/s 234A of the Act made by the Assessing Officer is concerned, it is the submission of the learned Counsel for the assessee that the said return has been filed before the due date. We therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the extension of date by the CBDT if any, for that particular year and decide the issue as per fact and law. We hold and direct accordingly. Ground No.2 raised by the assessee is accordingly allowed for statistical purposes.”

12. The coordinate Bench of this Tribunal has already delivered a decision on facts identical to those of the present case dismissing both the appeals of Revenue as well as the assessee. Furthermore, the said decision has not been stayed or overruled by any higher judicial forum. In view of these circumstances, we respectfully following the decision of the co-ordinate bench of the Tribunal in the case of Sangam Wires (supra), though we do not find any infirmity in the order of ld.CIT(A), however, following the decisions in various cases holding the proposition that where the related sales were accepted, the amount of bogus purchases in its entirety cannot be added to the returned income and only certain percentage of profit embedded in such tainted purchases is to be added as additional income and further, the estimation of profit is over and above the profit already declared by the assessee in the

return of income, we feel appropriate to arrive at the profit margin of 10% on the bogus purchases and thus, addition to the extent of Rs.82,12,786/- (10% of Rs.8,21,27,860/-) is confirmed and Rs.7,39,15,074/- (Rs.8,21,27,860/- - Rs.82,12,786/-) is deleted. Thus, appeal of the Revenue is dismissed.

12.1. In the result, the appeal of Revenue is dismissed.

ITA No.615/Hyd/2024

13. Coming to the appeal of the assessee in ITA No.615/Hyd/2024, in view of our decision in ITA No.606/Hyd/2024, the appeal of assessee is also partly allowed.

14. In the result, the appeal of the assessee is partly allowed.

C.O.No.9/Hyd/2024

15. Coming to Cross – Objection filed by the assessee, in view of our finding in both the appeals of Revenue as well as the assessee, the cross objection filed by the assessee is dismissed as infructuous.

16. In the result, the C.O. filed by the assessee is dismissed.

17. To sum up, the appeal of the assessee is partly allowed and the Cross – Objection of assessee is dismissed and the appeal of Revenue is dismissed.

Order pronounced in the Open Court on 18th October, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 18.10.2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Mahalakshmi Laboratories Private Limited, Hyderabad, Flat No.101, D.No.3-5-83/18, Bhagyasree Apartments, Vivekananda Nagar Colony, Kukatpally, Hyderabad – 500072, Telangana.
2	The Income Tax Officer, Ward 17(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order